

## Message Text

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64

ORIGIN EA-09

INFO OCT-01 ISO-00 L-03 PM-04 NSC-05 SP-02 SS-15 CIAE-00

INR-07 NSAE-00 OMB-01 TRSE-00 JUSE-00 IO-13 SSO-00

NSCE-00 INRE-00 /060 R

DRAFTED BY DOD/ISA:SGOLDSMITH:JWG

APPROVED BY EA:RHMILLER

L/EA: EVERVILLE (DRAFT)

PM/ISO: GCHURCHILL (DRAFT)

EA/PHL: DPSULLIVAN

EA/PHL: JELAKE

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O R 092213Z AUG 76

FM SECSTATE WASHDC

TO AMEMBASSY MANILA IMMEDIATE

INFO SECDEF

JCS

CINCPAC

CINCPACAF

CINCPACFLT

CINCPACREPPHIL

CG 13TH AF

C O N F I D E N T I A L STATE 197319

MANILA FOR USDEL, CINCPAC ALSO FOR POLAD

E.O. 11652: GDS

TAGS: MARR, RP

SUBJECT: PHILIPPINE BASE NEGOTIATIONS: CLAIMS ARTICLE

REFS: A. MANILA 10810, USDEL 152

B. STATE 175936

1. AD REFERENDUM JOINT WORKING PAPER ON CLAIMS ARTICLE IS

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APPROVED WITH FOLLOWING CHANGES:

A. AMEND PARA 2 OF WORKING PAPER TO READ AS FOLLOWS:

"IN RECOGNITION THAT THE UNITED STATES AGREES TO SETTLE MERITORIOUS CLAIMS ARISING FROM THE OPERATION OF MOTOR VEHICLES OWNED AND OPERATED BY THE UNITED STATES FORCES WITHOUT PROOF OF NEGLIGENCE OR FAULT, IN CASES WHERE SUCH PROOF WOULD NOT BE REQUIRED TO ESTABLISH LIABILITY UNDER PHILIPPINE LAW, THE UNITED STATES SHALL NOT BE REQUIRED TO SECURE NO-FAULT OR OTHER FORMS OF INSURANCE FOR SUCH MOTOR VEHICLES."

B. IN LAST SENTENCE OF PARA 3 INSERT "WITH" AFTER "COOPERATE," AND DELETE THE WORDS "OR EXECUTION." AS ALTERNATIVE TO DELETION OF "OR EXECUTION," THIS SENTENCE COULD BE REWRITTEN AS FOLLOWS: "WHERE SUCH A CIVIL ACTION IS INSTITUTED AGAINST A MEMBER OF THE UNITED STATES

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FORCES OR THE CIVILIAN COMPONENT, OR A DEPENDENT, THE U.S. FACILITIES COMMANDER CONCERNED SHALL COOPERATE WITH AND ASSIST PHILIPPINE AUTHORITIES IN THE SERVICE OR EXECUTION OF SUMMONS, WRITS, OR OTHER PROCESSES ISSUED BY THE COURT IN CONNECTION WITH THE CIVIL ACTION."

2. WE BELIEVE ABOVE CHANGES TO PARA 2 WOULD ADEQUATELY MEET OUR DESIRE TO AVOID THE IMPLICATION THAT FAULT WILL NEVER BE A FACTOR IN OUR CONSIDERATION OF PAYMENT OF MERITORIOUS CLAIMS. ALSO, SINCE PURPOSE OF PROVISION IS TO SECURE EXEMPTION FROM NO-FAULT INSURANCE, ITS SCOPE SHOULD BE LIMITED TO MOTOR VEHICLES. CHANGE TO PARA 3 IS NECESSARY TO AVOID OBLIGATION TO ASSIST PHILS IN EXECUTION OF WRITS, ETC., IN SUITS AGAINST USG.

3. WE DO NOT CONSIDER IT NECESSARY TO STATE IN TEXT OF CLAIMS ARTICLE AS SET FORTH IN REF A THAT USG DOES NOT WAIVE ITS DEFENSES UNDER PHIL AND INTERNATIONAL LAW BECAUSE TEXT RELATES TO INDIVIDUAL CLAIMANTS' RIGHT TO INSTITUTE CIVIL ACTION RATHER THAN PHIL COURTS' RIGHT TO ENTERTAIN SUCH ACTION. ACCORDINGLY, WE DO NOT REGARD THIS ARTICLE AS IMPAIRING RIGHT TO ASSERT ANY APPROPRIATE

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DEFENSE, INCLUDING SOVEREIGN IMMUNITY WHERE USG IS PARTY IN INTEREST AND OFFICIAL ACTS IN CASES WHERE MEMBER OF FORCE OR CIVILIAN COMPONENT IS DEFENDANT. REQUEST YOUR CONFIRMATION THAT NEGOTIATING RECORD MAKES CLEAR TO PHILS THAT THIS ARTICLE CANNOT REPEAT CANNOT BE CONSIDERED TO CONSTITUTE A WAIVER OF USG'S RIGHT TO ASSERT SUCH DEFENSES (SEE PARA 5 REF B). UNLESS THIS IS CLEARLY UNDERSTOOD, THE WORDS "AGAINST THE UNITED STATES

GOVERNMENT OR THE INDIVIDUAL LIABLE UNDER PHILIPPINE LAW"  
SHOULD BE DELETED FROM THE FIRST SENTENCE OF PARA 3.

4. WE CONSIDER SECOND SENTENCE OF PARA 3 OF WORKING  
PAPER ADEQUATELY COVERS OUR CONCERNS EXPRESSED REF B  
RE EXHAUSTION OF ADMINISTRATIVE REMEDIES.

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** MILITARY BASE AGREEMENTS, NEGOTIATIONS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 09 AUG 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** ellisoob  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
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**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** SGOLDSMITH:JWG  
**Enclosure:** n/a  
**Executive Order:** GS  
**Errors:** N/A  
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**Previous Handling Restrictions:** n/a  
**Reference:** 76 MANILA 10810, 76 STATE 175936  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** ellisoob  
**Review Comment:** n/a  
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**Review Date:** 04 JUN 2004  
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**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
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**Subject:** PHILIPPINE BASE NEGOTIATIONS: CLAIMS ARTICLE  
**TAGS:** MARR, RP, US  
**To:** MANILA  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006